

AUTHORIZING A TRANSFER OF FUNDS TO THE SECRETARY OF THE INTERIOR FOR THE BENEFIT OF CERTAIN INDIANS ON THE CROW INDIAN RESERVATION

APRIL 14 (legislative day, APRIL 11), 1988.—Ordered to be printed

Mr. INOUE, from the Select Committee on Indian Affairs,
submitted the following

REPORT

[To accompany S. 2273]

The Select Committee on Indian Affairs, to which was referred the bill (S. 2273) authorizing a transfer of funds to the Secretary of the Interior for the benefit of certain Indians on the Crow Indian Reservation having considered the same, reports favorably thereon with amendments and recommends that the bill (as amended) do pass.

The amendments are as follows:

(1) On page 2, strike section 2 in its entirety and insert in lieu thereof the following new section:

The Secretary of the Interior and the Secretary of Health and Human Services shall enter into a Memorandum of Understanding which shall specify the minimum requirements necessary to administer on an expedited basis the funds transferred under section 1. Such funds shall be used to provide, through the Crow Agency Social Services Program of the Bureau of Indian Affairs, the assistance and benefits otherwise available under the Low-Income Home Energy Assistance Act of 1981 to those Indian households who meet the eligibility criteria established by the Crow Tribe in its grant application for fiscal year 1988 and the agreement between the State of Montana and the Crow Tribe for such year. The provisions of the Memorandum of Understanding shall be in lieu of any other legal requirements that would otherwise be applicable to the ad-

ministration of such funds or the assistance and benefits to be provided with such funds.

(2) On page 2, section 3, strike everything after the words "succeeding fiscal year", and insert a period after the word "year".

PURPOSE

The purpose of S. 2273 is to authorize the Department of Health and Human Services to transfer \$180,000 of fiscal year 1988 LIHEAP grant for the Crow Tribe to the Bureau of Indian Affairs in the Department of the Interior pursuant to an interagency Memorandum of Understanding. The Social Services Program at the Crow Agency of the BIA shall utilize the funds to provide emergency assistance to low-income residents of the Crow reservation who are eligible for the Low-Income Home Energy Assistance Program (LIHEAP). LIHEAP is a program which assists low-income people with utility and fuel bills.

BACKGROUND

The Department of Health and Human Services has suspended the fiscal year 1988 LIHEAP grant funds for the Crow Tribe on the basis of an investigation which substantiates several areas of non-compliance with the law. This has created a situation where over 400 families on the Crow Indian Reservation are in jeopardy of losing utility services.

As a result of several complaints registered with the Department of Health and Human Services about the Crow Tribal administration of the 1987 LIHEAP grant, HHS officials conducted a field investigation of the program and determined that the Crow Tribe had not utilized LIHEAP funds in substantial compliance with the Act and underlying regulations. As a result of the program investigation, the U.S. Department of Health and Human Services suspended \$277,000 in fiscal year 1988 LIHEAP grant funds appropriated for residents of the Crow Indian reservation pending resolution of the grant problems.

Consequently, low-income people on the Crow Indian reservation who are eligible for LIHEAP assistance have not received assistance during the winter of 1987-88. Although the State of Montana has been willing to provide assistance, the State is precluded by the LIHEAP statute from providing services to an area where a tribe has a grant. Further, the Tribe is not willing to allow the State to administer a program on the reservation. During this period (October 1, 1987 through April 1, 1988) the rural electric coops which provide electrical services to the Crow reservation have accrued nearly \$350,000 in debt from Crow tribal members, which is causing serious financial problems for them. Under Montana State law, utilities do not disconnect utilities during the period of November 1 to April 1 because of the extreme winter weather conditions. On April 1st, however, the coops announced that they would begin disconnections on the Crow reservation. The Crow families who were eligible for LIHEAP services appealed to Senator Melcher for assistance. At the Senator's request, the electric cooperatives agreed to hold off on disconnections pending prompt Congressional action.

On April 6th, HHS requested that the Tribe voluntarily withdraw its application for the fiscal year 1988 LIHEAP grant, in which case HHS would provide the funds to the State which had agreed to administer the LIHEAP program on the Crow reservation. According to the Tribal Attorneys and tribal spokespersons, the Tribe is not willing to voluntarily withdraw its grant application. Anticipating this tribal response, HHS had also informed the Tribe in the letter of April 6, 1988 that if the Tribe did not withdraw the agency will formally terminate the grant on April 22, 1988. The Crow Tribal Administration has informed Senator Melcher's office that it intends to appeal the Department's decision as provided for under the LIHEAP statute, a process which will take at least two or three months. Under the LIHEAP statute, the Department is prohibited from disbursing the grant funds to an entity other than the Crow Tribe until the agency's decision is upheld through the appeals process required by law.

On April 1, 1988 Senator Melcher requested that Secretary Hodel take emergency action to deal with the situation. The Secretary responded in a letter of April 12, 1988 that the Department of Interior does not have authority to administer the LIHEAP program. The Department of Health and Human Services also requires authorizing legislation to transfer funds to the Department of Interior for the purpose of allowing the BIA to administer an emergency program.

LEGISLATIVE HISTORY

Senator Melcher introduced S. 2273 on April 12th, 1988. On April 13th, by unanimous consent of the Senate, the bill was referred to the Select Committee on Indian Affairs. It was scheduled for immediate Committee consideration. There is no companion bill in the House.

COMMITTEE RECOMMENDATIONS AND TABULATION OF VOTE

The Select Committee on Indian Affairs, in open business session on April 13, 1988, with a quorum present, recommends by a unanimous vote that the Senate pass S. 2273, as amended.

COMMITTEE AMENDMENTS

Two amendments of a clarifying nature were recommended by the U.S. Department of Health and Human Services and were adopted by unanimous consent. The amendments are set forth in full in this Report.

SECTION-BY-SECTION ANALYSIS

Section 1 of the bill would authorize the Secretary of Health and Human Services to transfer \$180,000 from the funds appropriated for the Crow Tribal Low-Income Home Energy Assistance Program to the Secretary of the Interior. The Committee intends that these funds will be transferred as soon as possible after enactment. The Committee notes that after the transfer of the \$180,000 from the fiscal year 1988 grant funds, approximately \$97,000 will remain within HHS. These remaining grant funds will be dispersed by HHS as determined by the appeals decision for the benefit of

LIHEAP eligible Indian households on the Crow Indian reservation.

Section 2. Provides for a Memorandum of Understanding to be developed between the two departments to specify how the funds will be administered through the Social Services program of the Crow Agency Bureau of Indian Affairs to provide prompt emergency LIHEAP services to eligible Indian households on the Crow Indian reservation. The Bureau of Indian Affairs will utilize the eligibility standards developed by the Crow Tribe in its Fiscal Year 1988 LIHEAP grant application.

Because of the emergency situation on the reservation, the Committee does not think it is proper for the Bureau of Indian Affairs to deduct any administrative costs from the LIHEAP funds which will be transferred pursuant to this legislation. Rather, the Committee recommends that the BIA request technical assistance from the State of Montana to orient and advise existing social services staff on how to administer the program. Further, it is the intent of the Committee that the BIA expedite the processing of applications, determination of eligible recipients and the processing of vendor payments. The Committee believes that the emergency administration of the program can be accomplished within 4 to 6 weeks after enactment.

Section 3. This section clarifies that nothing in the bill will affect the eligibility of the Crow Tribe to receive LIHEAP grants in the future. The Committee believes that this language is necessary because the Tribe wants to rectify the problems with the grant administration and re-establish its eligibility as a grantee. The legislation is not to be construed as prejudicing the Tribe's right to be a future grantee of the LIHEAP program.

COST AND BUDGETARY CONSIDERATIONS

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, April 14, 1988.

Hon. DANIEL K. INOUE,
Chairman, Select Committee on Indian Affairs,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: In response to a request from your staff, we have prepared a cost estimate of S. 2273, as reported from the Senate Select Committee on Indian Affairs, April 13, 1988. The bill would transfer from the Low-Income Home Energy Assistance Program \$180,000 of 1988 appropriated funds to the Bureau of Indian Affairs. This money would be used to provide the Crow Indian tribe of Montana with services that would otherwise have been available under the Low-Income Home Energy Assistance Act of 1981.

The Congressional Budget Office has determined that this bill would have no cost impact on the federal government. The funds which would be transferred under the bill were originally allocated to the Crow Indian tribe, but their dispersal has been halted by the Department of Health and Human Services (HHS). The Crow Indian tribe can enter an appeal process which could last up to three months at the end of which the funds will either be given to the tribe for dispersal or to the state of Montana. Based on discus-

sions with personnel at the Economic Assistance Office in Montana and at HHS, we would expect that at the end of the appeal process the funds would still be spent in fiscal year 1988. Since we would expect that with the passage of the bill the funds would also be spent in fiscal year 1988, there is no additional cost as a result of this bill.

If you have questions regarding this estimate, please contact me or have your staff contact Richard Curley.

Sincerely,

JAMES L. BLUM, *Acting Director.*

REGULATORY IMPACT STATEMENT

Paragraph 11(b) of the Rule XXVI of the Standing Rules of the Senate requires each report accompanying a bill to evaluate the regulatory and paperwork impact that would be incurred in carrying out the bill.

The Committee believes that S. 2273, as amended, will have no regulatory or paperwork impact.

EXECUTIVE COMMUNICATIONS

The Committee has not received any correspondence from the Executive Branch. However, the Department of Interior, through the Secretary, forwarded the following letter to Senator Melcher which presents the Department's views on the situation.

THE SECRETARY OF THE INTERIOR,
Washington, DC, April 12, 1988.

Hon. JOHN MELCHER,
U.S. Senate, Washington, DC.

DEAR SENATOR MELCHER: This is in response to your letter of April 1, requesting the Bureau of Indian Affairs to provide emergency relief to the Crow Indians who are in danger of having their power disconnected.

I understand this has been a considerable problem for some time with regard to delinquent energy bills owed by individuals and the Tribe. It is also my understanding that the problem has been aggravated by the suspension of a Department of Health and Human Services (HHS) grant program administered by the Crow Tribe for the benefit of their people. The grant program is known as the Low Income Home Energy Assistance Program (LIHEAP) in which the State of Montana and other Indian tribes participate as grant recipients.

As you are aware, the suspension of the grant is expected to be appealed by the tribal government, thereby causing the \$278,000 allocated for Crow to be frozen pending adjudication by HHS. The program could be administered by the State, but the tribal chairman is reluctant to allow this to happen while he is pursuing an appeal.

The Bureau of Indian Affairs is not authorized to execute a grant program provided by HHS directly to State and Indian tribal governments. The Bureau's social services program personnel at the Crow Agency and the Billings Area Office are prepared to do ev-

everything in their means to provide for eligible needy Indians entitled to receive services; however, that does not include the direct payment of chronic delinquent fuel bills.

The Bureau's general assistance payments in Montana are based on the state's AFDC payment rates, which incorporate an amount for utilities as well as other essential needs. Therefore, general assistance payments are structured to take into account home energy needs. It is the responsibility of individual assistance recipients to arrange payment for all personal indebtedness.

As was discussed between Bureau representatives and Ms. Clara Spotted Elk of your Washington office, it is unlikely that the Bureau could be authorized to administer the LIHEAP program on behalf of the Crow Tribe. However, the Bureau is willing to discuss such an undertaking with HHS at their request.

The Bureau will certainly do whatever it is currently authorized to do to alleviate any individual hardships. Our legal and moral responsibilities will be met, but at the same time we need to recognize that the Crow Tribe has legal and moral responsibilities as a government to its people. In the interest of the principle of Indian self-determination, the tribe and its members must shoulder their responsibilities and accept the consequences of their actions.

Sincerely,

DONALD PAUL HODEL.

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